

REMARKS

The present Supplemental Amendment under 37 CFR 1.116 is in response to the Final Office Action mailed February 28, 2006 and the Advisory Action mailed July 11, 2006, in the above-identified application. Enclosed herewith is a Petition requesting a two-month extension of time for resetting the deadline for responding to the Office Action from June 28, 2006, to and including July 28, 2006. Applicants note that a Petition requesting a one-month extension of time for resetting the deadline for responding to the Final Office Action was filed with the Amendment mailed June 20, 2006.

In the Advisory Action, the Examiner asserts that the prior art rejection is maintained. Thus, the Examiner continues to reject claims 13-16, 18, 20-21 and 23-26 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,989,291 to Ralph *et al.* in view of U.S. Patent No. 3,867,728 to Stubstad *et al.* In response to the rejection, Applicants have amended independent claims 13, 16 and 21 to recite that the spring or joint is "affixed" to one of the first and second plates. Paragraph [0028] of the specification teaches that the "[p]late 100A further includes a single set of threaded holes 111 for receiving the set screws [shown in FIGS. 4A and 4B] required to affix the lateral ends of the domed arch strip spring thereto." Thus, the specification and drawings, particularly FIGS. 4A-4B and 5, clearly support the recitation that the spring or joint is "affixed" to one of the plates.

Applicants respectfully assert that claim 13 is unobvious over Ralph and Stubstad because the references neither disclose nor suggest an intervertebral spacer device including a first plate and a second plate "wherein an inner surface of one of said plates comprises a ball-shaped structure extending therefrom and an inner surface of the other one of said plates has a spring affixed thereto."

Independent claim 16 is unobvious over Ralph and Stubstad because the cited references neither disclose nor suggest an intervertebral spacer device including a first plate and a second plate, "said device further comprising a joint that couples said first and second plates together, said joint including a ball attached with one of said plates and a socket affixed with the other one of said plates, wherein said joint permits said first and second plates to move relative to one another."

Independent claim 21 is unobvious over Ralph and Stubstad because the cited references neither disclose nor suggest an intervertebral spacer device including first and second plates, "wherein an inner surface of one of said plates has a ball-shaped structure extending therefrom and an inner surface of the other one of said plates has a spring affixed thereto." The remaining claims are unobvious by virtue of their dependence from respective independent claims 13, 16 and 21.

Applicants enclosed a Terminal Disclaimer with the Amendment under 37 CFR §1.116 filed on June 20, 2006. Applicants note that the initial Terminal Disclaimer had a minor defect in that it did not state that SpineCore, Inc. was the owner of 100 percent interest in the present application. Thus, Applicants resubmit the Terminal Disclaimer to properly note that SpineCore, Inc. is the owner on 100 percent interest in the present application.

As it is believed that all of the rejections set forth in the Office Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

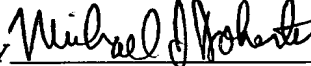
Application No.: 10/648,464

Docket No.: SPINE 3.0-446 CIP III CONT

If there are any additional charges in connection with this requested Supplement Amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: July 25, 2006

Respectfully submitted,

By 

Michael J. Doherty

Registration No.: 40,592

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicants

678146_1.DOC